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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/036,573	12/31/2001	Robert L. Popp	KCC 4770 (K.C. NO. 17,310	4042
321	7590	08/10/2006	EXAMINER	
SENNIGER POWERS ONE METROPOLITAN SQUARE 16TH FLOOR ST LOUIS, MO 63102			REICHLER, KARIN M	
			ART UNIT	PAPER NUMBER
			3761	

DATE MAILED: 08/10/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

10/036,573

Applicant(s)

POPP ET AL.

Examiner

Karin M. Reichle

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 09 May 2006.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 2-5, 8, 9, 11, 14, 16, 17, 20, 21, 28, 30, 31, 33-37 and 40-43 is/are pending in the application.
- 4a) Of the above claim(s) 2, 4, 5, 8, 11, 14, 16, 17, 20 and 21 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 3, 9, 28, 30, 31, 33-37 and 40-43 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 14 November 2005 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |   |   |
|---|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)                        | 4) <input type="checkbox"/> Interview Summary (PTO-413)                     |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)    | Paper No(s)/Mail Date. _____  |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date _____   | 6) <input type="checkbox"/> Other: _____                                    |

## DETAILED ACTION

### *Finality*

1. The FINAL rejection of 12-21-05 is withdrawn and the amendment filed 11-25-05 entered as set forth below. Since the 5-9-06 Appeal Brief responds to the 12-21-05 FINAL which did not address the 11-25-05 response, such Brief has been placed in the file, but not considered. The 2-20-06 petition filed under 1.181(a) has also been placed in the application and forward to the appropriate authority for consideration.

### *Election/Restrictions*

2. Claims 2, 4-5, 8, 11, 14, 16-17, and 20-21 remain withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to a nonelected invention and species, there being no allowable generic or linking claim. Election was made **without** traverse in Paper No. 6. The invention and species elected are a mechanical fastening system with an inelastic stabilizer, force application without substantial necking or gathering, and machine direction orientation.

### *Specification*

#### *Drawings*

3. The drawings were received on 11-25-05. These drawings are approved in part by the Examiner. Figures 1-9b are approved. Figure 9c is not approved because it does not show the "oriented material, see detailed discussion infra.

4. The drawings are objected to because a Figure 9c should be provided. See discussion *supra* and *infra*. Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as “amended.” If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either “Replacement Sheet” or “New Sheet” pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

### *Description*

5. The disclosure is objected to because of the following informalities: the application as filed include definitions of the terms “nonwoven”, “nonwoven web” and oriented material”, see page 8, lines 12-13 and page 9, lines 16-18. In light of these definitions the meaning of the term “oriented non-woven loop material” would be materials and webs of material formed without the aid of a textile weaving or knitting process in which mechanical drawing of the material has resulted in the alignment of the fibers constituting the material in a direction generally parallel to

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the direction of applied force (See the discussion of the terminology “generally” in the Claim Language Interpretation section *infra*). Thus mechanical drawing of a nonwoven material results in alignment/realignment of more than one fiber of the material generally parallel to the direction of applied force. The application as filed also disclosed in the paragraph bridging pages 27-28, especially page 27, lines 8-10 that a nonwoven, i.e. an orientable material, can be drawn between two nips to “orient” the material, i.e. produce an “oriented material”. The invention and species elected by Applicant are a mechanical fastening system with an inelastic stabilizer, force application without substantial necking or gathering, and machine direction orientation. Therefore, in addition to the portions cited *supra*, attention is also invited to the application as filed at the paragraph bridging pages 29-30, especially, page 30, lines 4-6, i.e. an “oriented” material attached to an inelastic substrate/stabilizer results in a inelastic loop material.

The amendment filed 11-14-05 added a definition of “oriented nonwoven loop material” at page 9 and a description of Figure 9c at page 5 and page 27 which are, at best, see discussion and rejections *infra*, inconsistent with the application as filed, i.e. the description of the fastening system is unclear/inconsistent. Such definition of “oriented nonwoven loop material” now added to page 9 does not require the number of fibers oriented in the direction of an applied force due to application of such force, whether it is two fibers or more than two fibers, be oriented generally parallel in that direction. The definition sets forth that more fibers of the web are generally parallel to a direction corresponding to a direction of a force applied and that more fibers are oriented, i.e. realigned/alterd, in such direction after the application of such force than before, but of such realigned/alterd fibers none are necessarily required to be realigned/alterd generally parallel to the direction of applied force, i.e. the “orientable” material and “oriented”

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material could have the same number of generally parallel fibers as long as there are more generally parallel fibers than not generally parallel fibers. The descriptions of Figure 9c also set forth such realigned fibers, i.e. don't require more of such fibers be parallel after the application of than before the application of force, merely more are aligned in the direction of force. The lack of clarity/inconsistency is exacerbated by the Applicant's arguments bridging pages 7-9 and the Durrance declaration, last paragraph of section 4, of 6-20-05 which discuss Figures and descriptions thereof, e.g., Figure 9b, which appear to be inconsistent with such Figures and descriptions thereof added by the 11-14-05 amendment. The claims also appear, see discussion *infra*, to be inconsistent with either definition of "oriented nonwoven loop material", i.e. that as filed or as added by the 11-14-05 amendment, further exacerbating the confusion. Specifically, the claims set "oriented nonwoven loop material" but regardless of which definition is used with regard thereto, the claims also appear to require the oriented, not orientable, nonwoven loop material of the fastener include a web of fibers in which a greater number of fibers are, not previously were, oriented in a direction by the application of a force in such direction to the web, i.e. there seems to be more than one orientation of fibers being claimed including one in which the loop material is attached to the substrate, i.e. is the fastener. However, Applicant's attention is reinvited to the discussion *supra* in which the substrate elected is inelastic and page 30, lines 4-6, i.e. in the elected species, the "oriented" material once connected to the inelastic substrate is no longer extensible, i.e. not capable of further orientation. Therefore, a clear, consistent description of the fastening system should be set forth, i.e. what does the terminology "oriented nonwoven loop material" encompass? How many times is the material "oriented"? Once from an orientable material to an oriented material? Twice from a thus oriented material to a twice

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oriented material? How many fibers of those aligned/realigned extend generally parallel? Does the number of fibers aligned in a specific direction keep increasing every time there is a reorientation? How does such occur if the substrate to which the loop material is attached is inelastic? See also discussion *infra*. Appropriate correction is required.

6. The amendment filed 11-14-05 is objected to under 35 U.S.C. 132(a) because it introduces new matter into the disclosure. 35 U.S.C. 132(a) states that no amendment shall introduce new matter into the disclosure of the invention. The added material which is not supported by the original disclosure is as follows: the amendment to page 5, third paragraph thereof, to page 9, line 11 and to page 27, line 8, lines 8 et seq thereof.

Applicant is required to cancel the new matter in the reply to this Office Action.

See discussion of the new definition of the term “oriented nonwoven loop material” and the descriptions of Figure 9c with regard to the application as filed in paragraph 5 above. Therefore, regardless of the number of fibers realigned/alterd, at worst, where is the support for the definition of “oriented nonwoven loop material” now added to page 9 and the descriptions of Figure 9c? The Durrance declaration of 6-20-05 has been reconsidered but not only is such declaration not consistent with the changes made as discussed *supra*, but such is not deemed persuasive with respect to support for the amendments because it does not set forth that the one of ordinary skill in the art would have understood such definitions/descriptions as argued when interpreted in light of the specification as filed, i.e. the definition of “oriented material” on page 9 as filed.

***Claim Rejections - 35 USC § 112***

7. Claims 3, 9, 28, 30-31, 33-37 and 40-43 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

In regard to claims 28, 33, 40 and 42 and thereby the claims dependent therefrom, and as discussed supra, the description of the first fastening component is unclear, e.g. what is “oriented nonwoven loop material”? When is the claimed orientation taking place? Therefore, is the definition of the “oriented nonwoven loop material”, i.e. the orientation referred to in such definition, and the claimed orientation one and the same? Different?

8. Claims 3, 9, 28, 30-31, 33-37 and 40-43 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. See the claim terminology “oriented nonwoven loop material” and the discussion in paragraphs 5-7 supra. Where is the support for such definition in the application as filed? Also, if Applicant is claiming that the oriented loop material of the fastener is further oriented, rather than the orientable material having been oriented, i.e. the underlined language in claims 28 and 33 and lines 4-8 of claims 40 and 42, where is the support for such, especially with regard to the elected species in which the loop material is an “oriented” material connected to an inelastic substrate?



***Claim Language Interpretation***

9. In light of the discussion supra, i.e. lack of clarity and/or new matter (and thus MPEP 2163.06, I.), the species elected (the invention and species elected are a mechanical fastening system with an inelastic stabilizer, force application without substantial necking or gathering, and machine direction orientation), the claim terminology, as best understood, e.g., the definitions thereof, and the claims being product by process claims (and thus also MPEP 2113, i.e. the patentability of a product by process is based on the product itself not the method of production (Therefore if the end product in the product by process is the same as or obvious from a product of the prior art, the product does not distinguish over the prior art even though the prior product was made by a different process)), the first fastening component of claims 3, 9 and 28, 30-31 and 33-37, i.e. the end product, will be considered an oriented nonwoven loop material secured to a substrate which comprises a nonwoven web of fibers with more of the fibers, i.e. at least greater than 50%, e.g. 100%, generally parallel to a direction or, in other words, the first fastening component can be a nonwoven loop material comprising a nonwoven web of fibers generally parallel fibers to a direction. Note *Arvin Industries v. Berns Air Corp*, 525 F2d. 182, 188 USPQ 49 (CCA 7-1975) with respect to the terminology “generally”. It is still noted that contrary to Applicant’s remarks, see, e.g., the underlined language at the top of page 14, of the 11-14-05 response, regardless of whether the claim is a product by process claim or not, the claims do not require the loop material web be applied to the substrate in an extended/tensioned configuration. It is also noted that the number of direction oriented fibers of the orientable material nor which direction “a direction” is with respect to the end product is claimed. Claim 30 is interpreted as claiming a substrate integral with an article. Claim 35 is interpreted to claim

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the substrate integrally with just the one article of claim 33. The terminology of claims 40-43 which is similar to that of claims 3, 9 and 28, 30-31, and 33-37 will be interpreted the same as discussed supra.

***Claim Rejections - 35 USC § 102/103***

10. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

11. Claims 3, 9, 28, 30-31, 33-37 and 40-43 are rejected under 35 U.S.C. 102(b) as being anticipated by, or in the alternative, under 35 USC 103(a) as obvious over Procter & Gamble, EP '198.

Claim 28: See, e.g., Claim Language Interpretation section supra, Figures 1-3, 10, col. 3, lines 4-18, col. 4, lines 4-14, col. 6, lines 2-10, col. 8, lines 1-34, col. 9, lines 21-42, col. 13, lines 25-30, col. 14, lines 30-36 and col. 15, lines 29-41, i.e. the mechanical fastening system is 50 and has a first fastening component 20 of oriented nonwoven loop material 30 attached to a substrate, e.g., 22 and a second fastening component 52 of hook material. The fastening components are refastenable. The oriented nonwoven loop material can be a nonwoven web of fibers having generally parallel fibers in a direction. This claim as interpreted includes a product by process. The patentability of such claim is based on the product itself not the method of production. Therefore if the end product in the product by process claim is the same as or obvious from a product of the prior art, the claim does not distinguish over the prior art even though the prior product was made by a different process. See MPEP 2113. Also see the Claim Language Interpretation section supra. The end product, as best understood, is the same as or obvious from

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the product of '198, see cited portions supra. Claim 3: see Figure 1, col. 5, lines 4-21, i.e. at least one axis, i.e. axes are MD and CD and col. 6, lines 2-5. Claim 9: see col. 8, lines 30-31. Claim 34: see portions cited supra, i.e. fibers are essentially parallel and can be tensioned without dislocation, disarrangement, skewing, etc. or untensioned, i.e. the nonwoven web is free from substantial necking and gathering. It is noted that the claim does not set forth when such freedom exists, i.e. before attachment, after attachment, before drawing, etc. Claim 30: it is noted that "integrally" does not require monolithic formation. See col. 14, line 50-col. 15, line 4. Claim 31: see col. 12, last line-col. 13, line 3. It is noted that the claim does not require direct attachment to the inelastic substrate. Claims 33-37: see discussion of claims 3, 9, 28, 30-31 and 34 supra and col. 14, line 50-col. 15, line 4. Claims 40-43: see discussion of claims supra.

12. Claims 3, 9, 28, 30-31, 33-37 and 40-43 are rejected under 35 U.S.C. 102(b) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over Procter & Gamble PCT '893.

Claim 28: See, e.g., Claim Language Interpretation section, Figures 1-8, page 4, lines 12 et seq, page 6, lines 4-7, page 7, lines 9-10, 13-15 and 21-23, page 8, lines 1-19, page 12, lines 8-9, page 13, lines 1-3, page 15, lines 13 et seq, i.e. the mechanical fastening system is 20 and has a first fastening component 22 of oriented nonwoven loop material 30 attached to a substrate, e.g., 34 and a second fastening component 24 of hook material 28. The fastening components are refastenable. This claim as interpreted includes a product by process. The patentability of such claim is based on the product itself not the method of production. Therefore if the end product in the product by process claim is the same as or obvious from a product of the prior art, the claim does not distinguish over the prior art even though the prior product was made by a different

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process. See MPEP 2113. The end product, as best understood, is the same as or obvious from the product of '893, see cited portions supra. Claim 3: see page 8, lines 1-7, page 15, lines 23 et seq, and page 19, lines 9-15. Therefore since the '893 device can include filaments 36 positioned in any direction, which includes a machine direction of the web, the '893 device is considered to meet the language of the claims. Claim 9: see page 13, lines 1-3. Claim 34: see portions cited supra, i.e. fibers are essentially parallel and can be tensioned without dislocation, disarrangement, skewing, etc. or untensioned, i.e. the nonwoven web is free from substantial necking and gathering. It is noted that the claim does not set forth when such freedom exists, i.e. before attachment, after attachment, before drawing, etc. Claim 30: it is noted that "integrally" does not require monolithic formation. See page 18, lines 28-33. Claim 31: see page 10, lines 7-10 and page 26, lines 24-26, i.e. the second lamina 80 is inelastic and if attached to composite 90 when it is completely relaxed, the composite 90 is inelastic. It is noted that the claim does not require direct attachment to the inelastic substrate. Claims 33-37: see discussion of claims 3, 9, 28, 30-31 and 34 supra, and page 18, lines 28-33. Claims 40-43: see discussion of claims supra.

### *Response to Arguments*

13. Applicants 11-14-05 remarks with regard to form have been considered but are either deemed moot in that the issue has not been repeated or are deemed not persuasive for the reasons already set forth supra. It is noted that such remarks did not address the rejections in paragraphs 7-9 of the 12-21-05 FINAL. Specifically, with regard to the 11-14-05 remarks addressing Noel and Weirich (such remarks are substantially the same as those filed 6-22-05), such remarks have been reconsidered but are still deemed not persuasive in that they are narrower than the claim

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language as best understood, discussed supra, and the teachings of the prior art. Attention is again invited to the discussion of product by process claims, i.e. patentability is determined upon the structure of the end product, and the specific portions of the references cited. Applicant has not set forth how the process of making the now claimed product, as best understood, has imparted some structure to the end product which distinguishes over that of the prior art. Applicant's request for a telephone interview in the last sentence of the third full paragraph on page 5 has been noted. If Applicant still desires such conference/interview, the Applicant should contact the Examiner by phone to arrange such.

### *Conclusion*

14. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

The amendments filed 11-14-05 necessitated any new grounds of rejection.

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15. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Karin M. Reichle whose telephone number is (571) 272-4936.

The examiner can normally be reached on Monday-Thursday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Tanya Zalukaeva can be reached on (571) 272-1115. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Karin M. Reichle  
Primary Examiner  
Art Unit 3761

KMR  
August 6, 2006